

1 THE HONORABLE ROBERT S. LASNIK  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 JULI ADAMS, )  
11 v. ) Plaintiff, ) Case No. 2:14-cv-1174 RSL  
12 THE HARTZ MOUNTAIN )  
13 CORPORATION, )  
14 Defendant. )  
SUPPLEMENTAL DECLARATION  
OF ANDREA L. CALVARUSO IN  
FURTHER SUPPORT OF  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

15 I, ANDREA L. CALVARUSO, hereby declare as follows:

16 1. I am a member of the firm of Kelley Drye & Warren LLP, counsel to Defendant,  
17 The Hartz Mountain Corporation ("Hartz" or "Defendant") in this matter. I make this  
18 declaration in support of Defendant's Motion for Summary Judgment.

19 2. I am over the age of eighteen (18), and am competent to testify regarding the  
20 facts stated herein.

21 3. The basis for my knowledge is my review of the files maintained by Kelley  
22 Drye & Warren LLP as part of its representation of Defendant, including the documents  
23 attached hereto.

24 4. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the  
25 deposition of Irina Briller, taken on August, 12, 2015.

26 5. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the  
27 deposition of Adam Coacher, taken on August 19, 2015.

SUPPLEMENTAL DECLARATION OF ANDREA L. CALVARUSO  
IN FURTHER SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT  
Case No. 2:14-cv-1174-RSL

LANE POWELL PC  
1420 FIFTH AVENUE, SUITE 4200  
P.O. BOX 91302  
SEATTLE, WA 98111-9402  
206.223.7000 FAX: 206.223.7107

6. Attached hereto as **Exhibit 3** is a true and correct copy of a document produced by Hartz in this action bearing bates number Hartz 018383.

7. Attached hereto as **Exhibit 4** is a true and correct copy of a document produced by Hartz in this action bearing bates numbers Hartz 000065, Hartz 000062, Hartz 00059, and Hartz 000057.

This Declaration is made under penalty of perjury under the laws of the United States this 30th day of October, 2015.

DATED: October 30, 2015  
New York, New York

/s/ Andrea L. Calvaruso  
Andrea L. Calvaruso

SUPPLEMENTAL DECLARATION OF ANDREA L. CALVARUSO  
IN FURTHER SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT  
Case No. 2:14-cv-1174-RSL

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SEATTLE, WA 98111-9402  
206.223.7000 FAX: 206.223.7107

## CERTIFICATE OF SERVICE

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington and the United States, that on the 30th day of October, 2015, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

<p>Anthony D. Shapiro  Hagens Berman Sobol Shapiro LLP  1918 Eighth Avenue, Suite 3300  Seattle, WA 98101-1244  Telephone: (206) 623-7292  Facsimile: (206) 623-0594  E-Mail: tony@hbsslaw.com</p>	<p>Simon B. Paris  Saltz Mongeluzzi, Barrett &amp; Bendesky, PC  One Liberty Place, 52<sup>nd</sup> Floor  1650 Market Street  Philadelphia, PA 19103  Telephone: (215) 575-3985  E-Mail: sparis@smbb.com</p>
<p>Thomas E. Loeser  Hagens Berman Sobol Shapiro LLP  1918 Eighth Avenue, Suite 3300  Seattle, WA 98101-1244  Facsimile: (206) 623-0594  E-Mail: toml@hbsslaw.com</p>	<p>Patrick Howard  Saltz Mongeluzzi, Barrett &amp; Bendesky, PC  One Liberty Place, 52<sup>nd</sup> Floor  1650 Market Street  Philadelphia, PA 19103  Telephone: (215) 575-3985  E-Mail: phoward@smbb.com</p>
<p>Daniel E. Gustafson  Gustafson Gluek PLLC  120 South 6<sup>th</sup> Street, Suite 2600  Minneapolis, MN 55402  Telephone: (612) 333-8844  E-Mail: dgustafson@gustafsongluek.com</p>	<p>Jonathan K. Cooperman <i>pro hac vice</i>  Kelley Drye &amp; Warren LLP  101 Park Avenue  New York, NY 10178-0062  Telephone: (212) 808-7534  Facsimile: (212) 808-7897  E-Mail: jcooperman@kelleydrye.com</p>
<p>Andrea L. Calvaruso <i>pro hac vice</i>  Kelley Drye &amp; Warren LLP  101 Park Avenue  New York, NY 10178-0062  Telephone: (212) 808-7853  Facsimile: (212) 808-7897  E-Mail: acalvaruso@kelleydrye.com</p>	

Executed on the 30th day of October, 2015, at Seattle, Washington

Carson Cooper

SUPPLEMENTAL DECLARATION OF ANDREA L. CALVARUSO  
IN FURTHER SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT  
Case No. 2:14-cv-1174-RSL

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P.O. BOX 91302  
SEATTLE, WA 98111-9402  
206.223.7000 FAX: 206.223.7107

# **Exhibit 1**

Page 1

1           UNITED STATES DISTRICT COURT  
2           FOR THE DISTRICT OF WASHINGTON AT SEATTLE  
3           Case No. 2:14-cv-1174-RSL

4           JULI ADAMS,

5           Plaintiff,

6           vs.

VIDEOTAPED  
DEPOSITION OF:  
IRINA BRILLER

7           THE HARTZ MOUNTAIN, CORP.,

8           Defendant.  
9  
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10

11           TRANSCRIPT of the stenographic notes of  
12           the proceedings in the above-entitled matter, as  
13           taken by and before CAROL ANN SHEPARD, a Certified  
14           Court Reporter of the State of New Jersey, held at  
15           the office of KELLEY DRYE & WARREN, LLP, One  
16           Jefferson Road, Parsippany, New Jersey, on  
17           Wednesday, August 12, 2015, commencing at 9:30 in  
18           the forenoon.

19  
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21  
22           VERITEXT LEGAL SOLUTIONS  
23           MID-ATLANTIC REGION  
24           1801 Market Street - Suite 1800  
25           Philadelphia, PA 19103

Page 2

1 A P P E A R A N C E S :

2

3 HAGENS BERMAN SOBOL & SHAPIRO, L.L.P.

4 1918 Eighth Avenue, Suite 3300

5 Seattle, Washington 98101

6 206-623-7292

7 tony@hbsslaw.com

8 BY: ANTHONY D. SHAPIRO, ESQ.

9 Attorneys for the Plaintiff

10

11 SALTZ MONGELUZZI BARRETT & BENDESKY, P.C.

12 1650 Market Street

13 Philadelphia, Pennsylvania 19103

14 215-575-3985

15 phoward@smbb.com

16 BY: PATRICK HOWARD, ESQ.

17 Attorneys for the Plaintiff

18

19 KELLEY, DRYE & WARREN, LLP

20 One Jefferson Road

21 Parsippany, New Jersey 07054

22 973-503-5900

23 jcooperman@kelleydrye.com

24 BY: JONATHAN K. COOPERMAN, ESQ.

25 Attorneys for the Defendant

26

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1           A.       When you're excited about a project and  
2 you need to get it done, I don't think you sit there  
3 and you, you know, remember that you left at, like,  
4 7 P.M. or 8 P.M. You just get it done. I don't  
5 remember. It was four years ago.

6           Q.       Okay. So you go through this process,  
7 you do the P&L, you get the creative team, you  
8 figure out what the toys will sell for. Do you come  
9 back to Mr. Coacher with -- with all this  
10 information?

11          A.       Yes.

12          Q.       Okay. And then what's the next step?

13          A.       Well, interestingly enough, when we did  
14 start going through this process, our coordinator,  
15 Helen, told us that we actually used to sell Angry  
16 Birds before, and she pulled out a couple of the  
17 toys. So I asked our legal team whether we owned  
18 the trademark, and I was told that we do own the  
19 trademark. I thought that was a great negotiation  
20 tactic that we could actually use with Rovio. And  
21 you know, I mentioned that to Adam, as well.

22          Q.       Okay. You said during this process,  
23 your coordinator, Helen, mentioned that you used to  
24 sell Angry Birds toys.

25          A.       Yes.

Page 240

1 CERTIFICATE  
2

3 I, CAROL ANN SHEPARD, a Notary Public and  
4 Certified Shorthand Reporter of the State of New  
5 Jersey, License No. 30X100101900, do hereby certify  
6 that prior to the commencement of the examination,  
7 IRINA BRILLER was duly sworn by me to testify the  
8 truth, the whole truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing is a  
10 true and accurate transcript of the testimony as  
11 taken stenographically by and before me at the time,  
12 place and on the date hereinbefore set forth.

13 I DO FURTHER CERTIFY that I am neither a  
14 relative nor employee nor attorney nor counsel of  
15 any of the parties to this action, and that I am  
16 neither a relative nor employee of such attorney or  
17 counsel, and that I am not financially interested in  
18 the action.

19  
20   
21

22 Certified Court Reporter of the State of New Jersey  
23

24 Dated: August 24, 2015  
25

# **Exhibit 2**

1 Page 1  
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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WASHINGTON AT SEATTLE  
Case No. 2:14-cv-1174-RSL

JULI ADAMS,

Plaintiff,

vs.

VIDEOTAPED  
DEPOSITION OF:  
ADAM COACHER

THE HARTZ MOUNTAIN, CORP.,

Defendant.

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TRANSCRIPT of the stenographic notes of  
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the forenoon.

VERITEXT LEGAL SOLUTIONS  
MID-ATLANTIC REGION  
1801 Market Street - Suite 1800  
Philadelphia, PA 19103

Page 2

1 A P P E A R A N C E S:

2

HAGENS BERMAN SOBOL & SHAPIRO, L.L.P.

3

1918 Eighth Avenue, Suite 3300

Seattle, Washington 98101

4

206-623-7292

toml@hbsslaw.com

5

BY: THOMAS E. LOESER, ESQ.

Attorneys for the Plaintiff

6

KELLEY, DRYE & WARREN, LLP

One Jefferson Road

8

Parsippany, New Jersey 07054

973-503-5900

jcooperman@kelleydrye.com

BY: JONATHAN K. COOPERMAN, ESQ.

10

Attorneys for the Defendant

11

ALSO PRESENT:

12

Daniel McClutchy, Videographer

13

14

15

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1       the Angry Birds trademark, if you had to do it over  
2 again, would you look into whether or not Juli Adams  
3 had any right to the Angry Birds trademark?

4                    MR. COOPERMAN: Objection.

5                    A.       I guess I would ask counsel to, you  
6 know, make sure we weren't going down a road that  
7 would get us in trouble later. That just makes  
8 sense.

9                    MR. LOESER: This a good time for a  
10 short break?

11                  A.       Let me clarify or add to that.

12                  I can't remember that I did ask that  
13 question specifically. It seems like I would have.  
14 And the -- see, the idea that I operated under  
15 moving forward from that was that Hartz owned the  
16 trademark and not Juli Adams. So there didn't seem  
17 to be any reason, once -- once I had the knowledge  
18 that Hartz owned the trademark, and I did see that  
19 in writing, I had no reason to think about Juli  
20 Adams anymore.

21                  Q.       I understand. So, after Bob Shipley  
22 told you, hey, we own the trademark, and, by the  
23 way, you should have known that we owned the  
24 trademark, that's what he said to you; right?

25                  MR. COOPERMAN: Objection.

Page 347

1 CERTIFICATE  
2

3 I, CAROL ANN SHEPARD, a Certified Court  
4 Reporter of the State of New Jersey, License No.  
5 30X100101900, do hereby certify that prior to the  
6 commencement of the examination, ADAM COACHER was  
7 duly sworn by me to testify the truth, the whole  
8 truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing is a  
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12 place and on the date hereinbefore set forth.

13 I DO FURTHER CERTIFY that I am neither a  
14 relative nor employee nor attorney nor counsel of  
15 any of the parties to this action, and that I am  
16 neither a relative nor employee of such attorney or  
17 counsel, and that I am not financially interested in  
18 the action.

19  
20   
21

22 \_\_\_\_\_  
23 Certified Court Reporter of the State of New Jersey  
24

25 Dated: August 31, 2015

# **Exhibit 3**

Tina Le Lay

---

From: Tina Le Lay  
Sent: Wed 1/31/2007 10:35 PM (GMT-00:00)  
To: Scott Yacovino; scott.yacovino  
Cc:  
Bcc:  
Subject: Fw: Julie Adams

Scott,

?????????

Tina

Tina Le Lay  
Director Marketing  
The Hartz Mountain Corporation  
400 Plaza Drive  
Secaucus, NJ 07094-3688  
Tel: 201.271.4800 ext. 7755  
telay@hartz.com

— Forwarded by Tina Le Lay/MLJ on 01/31/2007 05:35 PM —

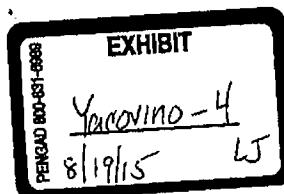
cgoldberg@hartz.com To telay@hartz.com  
01/31/2007 05:25 PM cc  
Subject Julie Adams

Please respond to  
cgoldberg@hartz.com

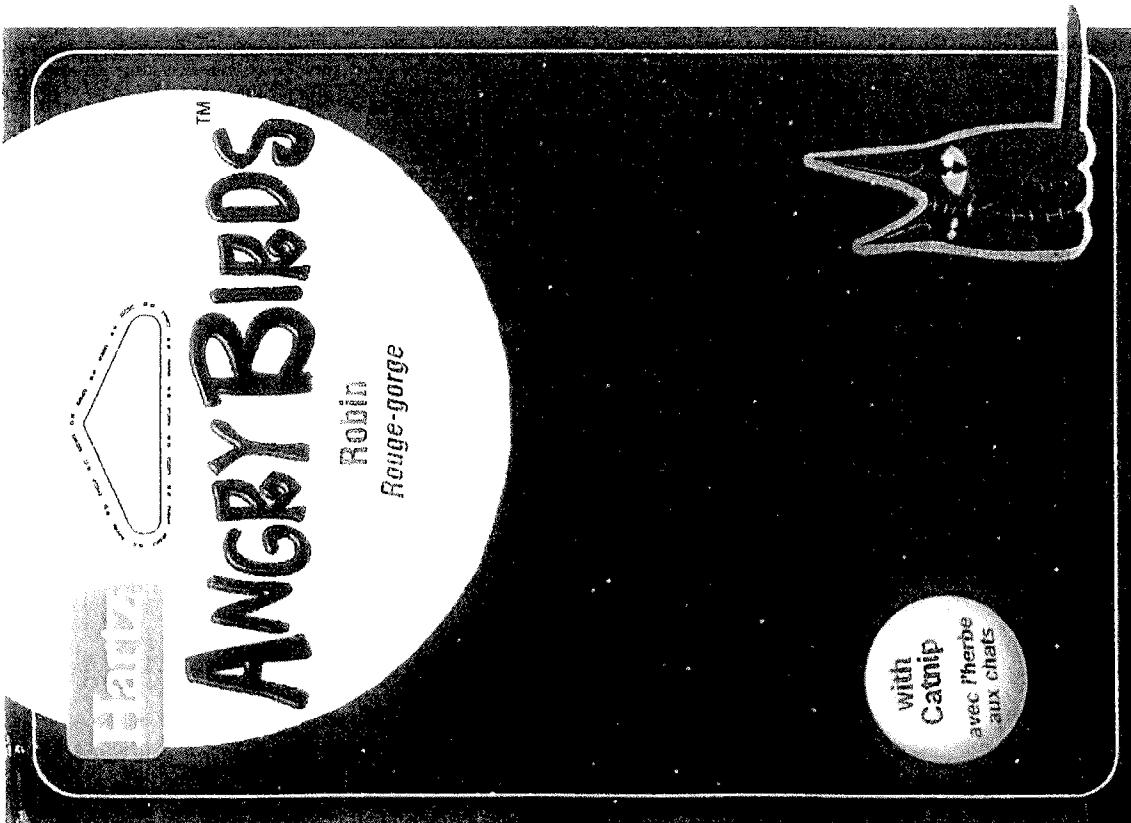
2 things - we need to debrief on this program. We will need to figure out if Tim had spoken w/her as we are not going to need her at Global Pet. Maybe Scott knows.

2nd - I think we need a "name" for this line - not just "the art of Julie Adams"

TTFN  
Sent from my Verizon Wireless BlackBerry



# **Exhibit 4**



File Name: 10675 803771 Robin Angry Bird.ai  
Packaging Spec:  
Artist: Jorge Oñate 2017 New Layout!  
Artist: Jorge Oñate 2017 Pack Cards and Ftp Ethen  
Sjagc7 - FCB, pack changes, back on Ethen

General Information	Product Details
Product Details	Print Legend
Print Legend	Print Preview
Print Preview	Print

CONFIDENTIAL

HARTZ 000065

Hartz® Angry Birds™ are angry because you are buying them as playthings for your cats. But don't feel bad. These birds were bred to be confrontational.

Supervise your pet. For play only. Not a child's toy. Toy should be removed and replaced if excessive wear or damage occurs.

Hartz® Angry Birds™ sont en rogne parce que vous les achetez comme jouets pour vos chats. Mais ne vous culpabilisez pas. Ces oiseaux ont été élevés pour être combattifs.

Surveillez votre animal. Pour jouer seulement. Ce n'est pas un jouet pour enfants. Le jouet doit être retiré et remplacé s'il est très usé ou endommagé.

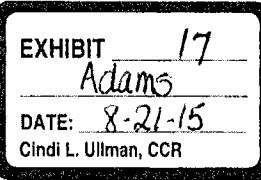
Juli Adams is a contemporary painter, based in Seattle, Washington, whose creative creatures have been brought to life in the new Hartz® Juli Adams' line of dog and cat products. Juli has been presenting her art at high-end, invitation only, fine art fairs and galleries across the United States. You will find her works in homes and offices of all types and with collectors of all ages.

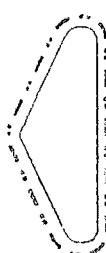
Juli Adams est une artiste contemporaine établie à Seattle dans l'Etat de Washington, dont les créatures fantastiques prennent vie dans la nouvelle gamme de produits pour chiens et chats Hartz®. Juli présente ses œuvres lors d'expositions privées dans des galeries et salons d'art prestigieux à travers les Etats-Unis. Ses œuvres se trouvent dans des résidences et bureaux de tout type et les collectionneurs proviennent de toutes les tranches d'âge.

L'artiste Juli Adams, basée à Seattle, Washington, a créé ces créatures imaginaires qui sont maintenant disponibles sous forme de jouets pour chiens et chats Hartz. Ses œuvres sont exposées dans des galeries et salons d'art prestigieux à travers les Etats-Unis. Ses œuvres sont également disponibles dans des résidences et bureaux de tout type et les collectionneurs proviennent de toutes les tranches d'âge.

Made in China (Art. Fabricié en Chine pour l'Etat Hartz & Julian Corporation, Secaucus, NJ, USA. Importé et distribué par Hartz Canada, Inc., St. Thomas, Ontario N5P 3M7, Canada. Hartz® est une marque déposée et registrée de la Hartz Mountain Corporation. SO3711

www.juliadams.com





Hartz® Angry Birds™ are angry because you are buying them as playthings for your cats. But don't feel bad. These birds were bred to be confrontational.

Supervise your pet. For play only. Not a child's toy. Toy should be removed and replaced if excessive wear or damage occurs.

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Juli Adams est une artiste-peintre contemporaine établie à Seattle dans l'Etat de Washington, dont les créatures fantastiques prennent vie dans la nouvelle gamme de produits pour chiens et chats. Juli Adams de Hartz®. Juli présente ses œuvres lors d'expositions privées dans des galeries et salons d'arts hippiques à travers les Etats-Unis. Ses œuvres se trouvent dans des résidences et bureaux de tout type et les collectionneurs proviennent de toutes les tranches d'âge.



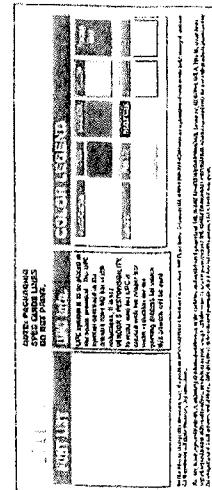
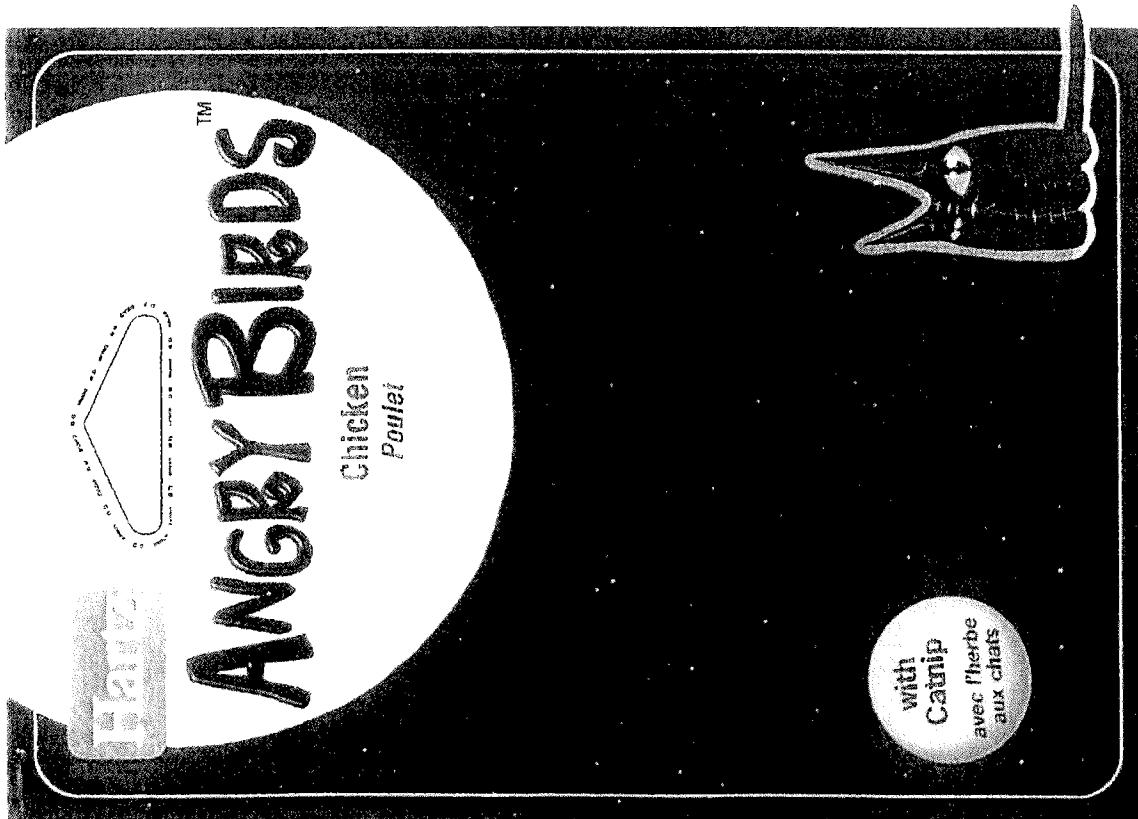
[www.juliadams.com](http://juliadams.com)



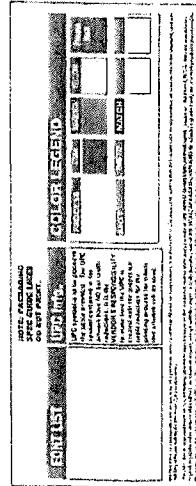
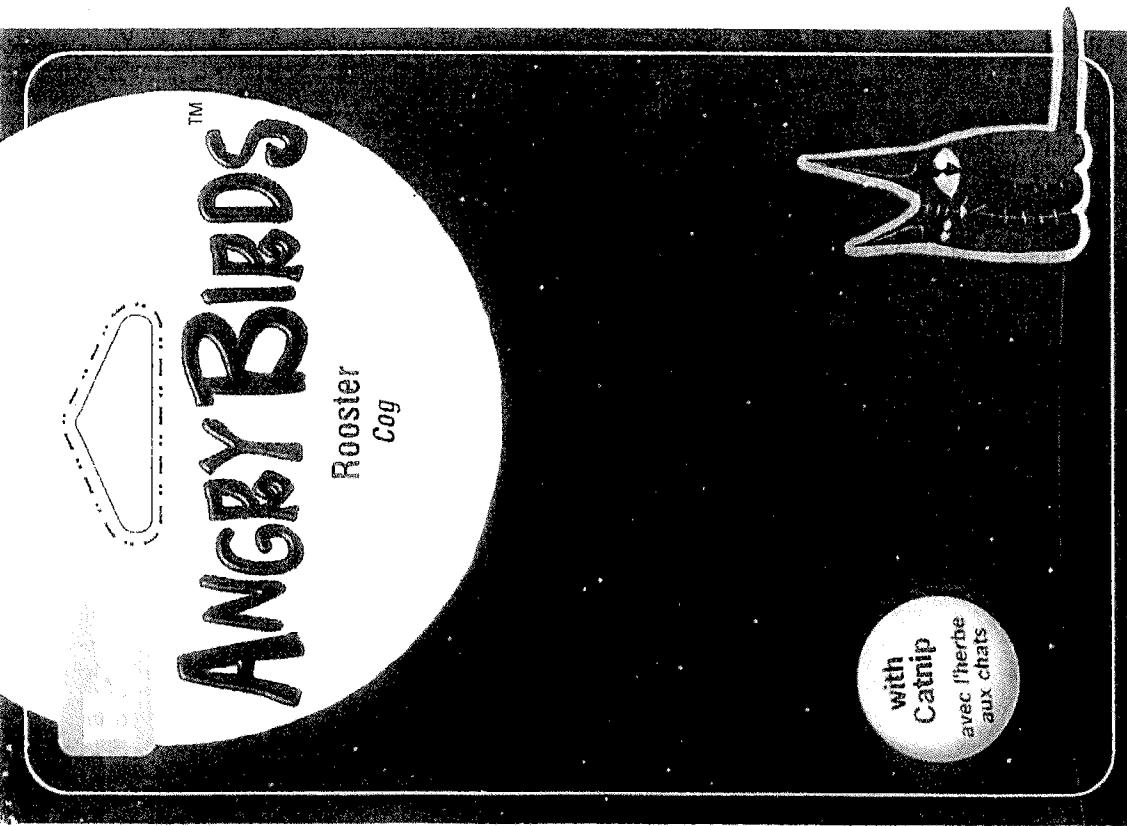
0 13270010674

Licensed from the art of Juli Adams.  
Œuvres de Juli Adams sous licence - www.juliadams.com  
Visitez [www.hartz.com](http://www.hartz.com) pour plus d'information.  
Visitez [www.juliadams.com](http://www.juliadams.com) pour plus d'information.

Made in China for Hartz Inc. © 2012 Hartz Mountain Corporation,  
Seattle, WA 98134, USA. Imported by Hartz Pet Care, Inc.,  
St. Thomas, Ontario N5P 2M7, Canada. Hartz® is a registered trademark of  
Hartz. Hartz is a trademark registered for the Hartz Mountain Corporation. 50375



File Name: 10074 50375 Chicken ASbird.ai  
Packaging Spec:  
Artist: Jorge 030507 New Layout  
Artist: Jorge 030607 New Layout and Text edits  
Artist: Jorge 030707 Text edits and Fip Eden  
2012 - Rec. prod. changes, based on Eden



# ANGRY BIRDS

**Hariz® Angry Birds™** are angry because you are buying them as playthings for your cats. But don't feel bad. These birds were bred to be conformational.

Supervise your pet. For play only. Not a child's toy. Toy should be removed and replaced if excessive wear or damage occurs.

Hartz® Angry Birds™ sont en rogne parce que vous les achetez comme jouets pour vos chats. Mais ne vous culpabilisez pas. Ces oiseaux ont été élevés pour être combattifs.

**Surveillez votre animal.** Pour jouer seulement. Ce n'est pas un jouet pour enfants. Le jouet doit être retiré et remplacé s'il est très usé ou endommagé.

Juli Adams is a contemporary painter, based in Seattle, Washington, whose creative creatures have been brought to life in the new Hartz® Juli Adams' line of dog and cat products. Juli has been presenting her art at high-end, invitation only, fine art fairs and galleries across the United States. You will find her works in homes and offices of all types and with collectors of all ages.

Licensed from the art of Jésus Adans.  
Centres de Jésus Adans sous licence - visitez  
Visitez notre site Web pour plus d'information.  
Visitez notre site Web pour plus d'information.

0 3270010671 3

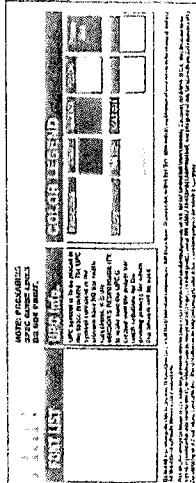
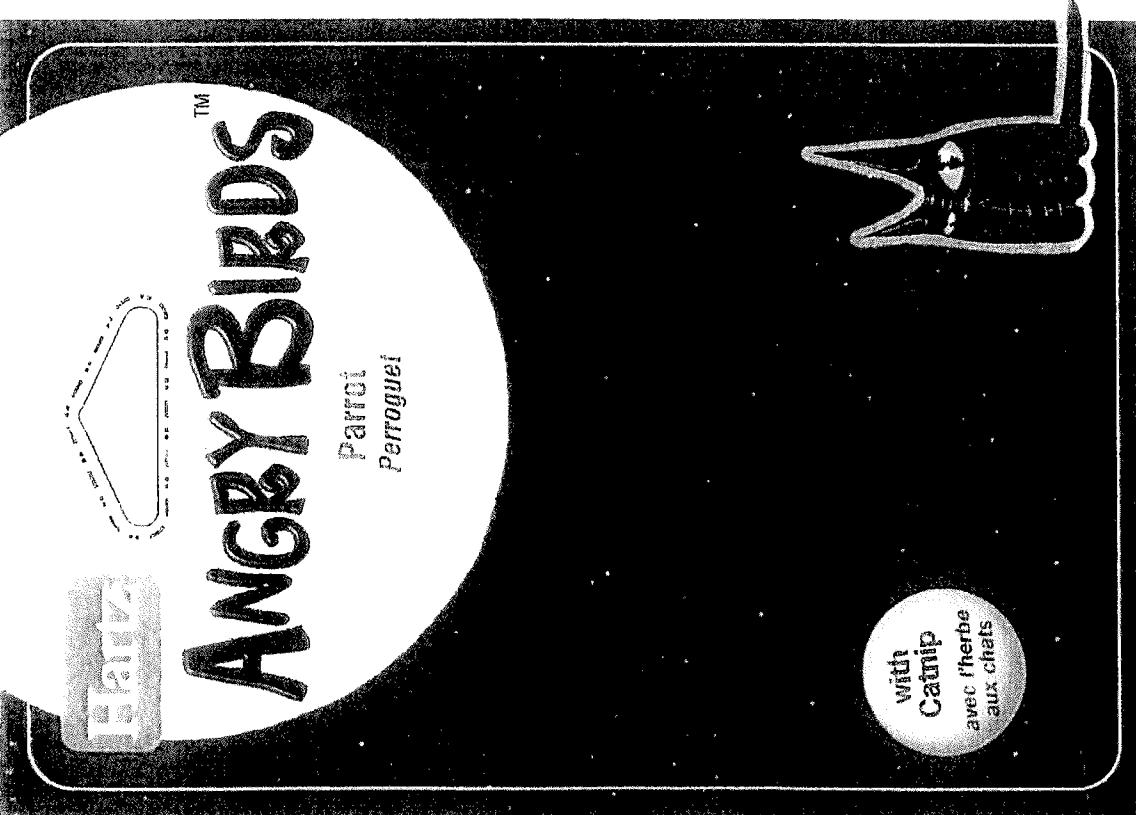
212

File Name: 10571 503712 Rooster ABird.ai  
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Artist: Jorge 03/05/07 New Layout  
Artist: Jorge 03/06/07 New Layout and Text  
Artist: Jorge 03/07/07 New Text edits and Fix

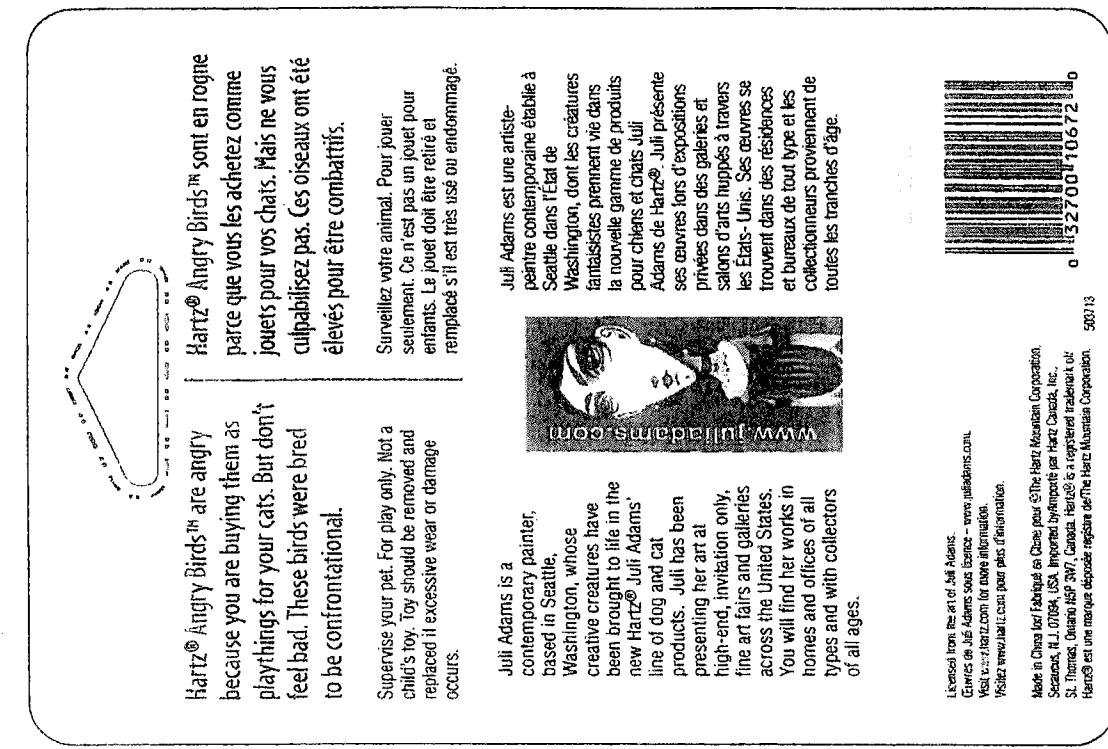
Printed @ 100%

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HARTZ 000059



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Clients of J.D. Adams save money - visit [jadefabrics.com](http://jadefabrics.com).  
Visit [www.hartz.com](http://www.hartz.com) for more information.  
**Hartz**  **Hartz Petcare**



Hartz® Angry Birds™ sont en rogne parce que vous les achetez comme jouets pour vos chats. Mais ne vous culpabilisez pas. Ces oiseaux ont été élevés pour être combattifs.

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A small, faint, irregular mark or smudge located near the bottom right corner of the page.

CONFIDENTIAL

HARTZ 000057